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## 2019 Class Action Winner— Berger Montague

Berger Montague's litigation results demonstrate their attorneys' extensive experience and talent in representing injured parties in litigation. The firm's work, particularly in antitrust; technology, privacy & data breach; and qui tam law are just a few highlights.

By **The Legal Intelligencer** | June 22, 2019



**Eric L. Cramer, Berger Montague chairman, class action practice group**

**Eric Cramer, with Berger Montague.**

*Berger Montague's litigation results*

*demonstrate their attorneys' extensive experience and talent in representing injured parties in litigation, and particularly in class actions.*



**Litigation Department Class Action winners: Berger Montague. Standing (left to right) Shanon J. Carson, David F. Sorensen, Merrill G. Davidoff and Sarah R. Schalman-Bergen. Seated, Eric L. Cramer (Younger Attorney grey tie) and H. Laddie Montague Jr.**

*One of the firm's biggest wins in 2018*

*came in the Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, in which it serves as co-lead plaintiffs counsel for a national class including millions of merchants against Visa, MasterCard and several large banks, including Bank of America, Chase and Citi, alleging that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards violated the antitrust laws. In September 2018, after 13 years of litigation, the plaintiffs and Visa and MasterCard reached the largest-ever class action settlement of an antitrust case.*

### **What were some of the department's most satisfying successes of 2018, and why?**

2018 has been a successful year, particularly for our antitrust class action practice. One of our most satisfying successes was the preliminary approval of the landmark settlement of *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, a case in which we have served as co-lead counsel since the case was filed in 2005 on behalf of a class of thousands of merchants throughout the United States. The lawsuit alleges that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards and their member banks violated antitrust laws through the collective fixing of interchange fees and adoption of rules that hindered competitive pressures to reduce those fees. In September 2018, Visa and MasterCard agreed to pay between \$5.56 billion-\$6.26 billion to settle the case, which is the largest-ever class action settlement of an antitrust case. After litigating this case for 13 years, we are extremely proud to have achieved this result on behalf of our clients and the class.

Another huge 2018 antitrust success was settling *In re Domestic Drywall Antitrust Litigation* for \$190.7 million after several years of hard-fought litigation. The firm served as co-lead counsel on behalf of a class of direct purchasers of drywall who alleged that the dominant drywall manufacturers engaged in a conspiracy to fix drywall prices in the United States and abolish the industry's longstanding practice of limiting price increases for the duration of a construction project through "job quotes."

Continuing in the antitrust arena, the firm served as co-lead counsel for a class of dental practices and dental laboratories in *In re Dental Supplies Antitrust Litigation*, a suit accusing the three largest distributors of dental supplies in the United States of price fixing. In September 2018, co-lead counsel announced that they agreed with defendants to settle on a classwide basis for \$80 million. The firm had still other antitrust successes. For instance, the firm played a lead role in litigating and favorably settling several class cases against pharmaceutical companies for delaying generic competition, including *In re Lidoderm Antitrust Litigation* (\$166 million settlement), *In re Celebrex (Celecoxib) Antitrust Litigation* (\$94 million settlement), and *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation* (\$76 million settlement).

A nonantitrust victory for the firm in 2018 was *Beckett v. Aetna*, in which the firm, along with the AIDS Law Project of Pennsylvania and the Legal Action Center, successfully litigated a class action lawsuit against Aetna for allegedly violating the privacy rights of thousands of its customers by exposing their highly private and confidential information regarding prescriptions for HIV medication. The lawsuit alleged that Aetna sent a notice regarding HIV medication in a large-window envelope, exposing the highly confidential information for about 12,000 Aetna customers in 24 states. In January 2018, the firm and its co-counsel achieved a \$17 million settlement for the benefit of the class.

**At a time when class action reform is back at the forefront of political discourse, do you anticipate the nature of your work changing in the coming years?**

To the extent that “class action reform” is a euphemism for erecting barriers to court access to cases that would otherwise be susceptible to class treatment, higher standards mean more risk, additional costs, and interposition of delays. As a result, we will redouble our efforts to bring only those cases that satisfy the most stringent of standards, both in terms of the ability to meet the test for class certification as well as

underlying merits of the case. We will also continue to apply skills and methods our lawyers have honed in class litigation to the representation of corporate clients in commercial litigation.

**A prospective client in crisis calls and asks why your team should be retained—what is your answer?**

As long as we believe in the merits of the client's case, my answer would be three-fold. First, we will not be out-lawyered or out-worked. We have some of the most talented, creative and experienced litigators in the nation, having successfully fought for the interests of our clients and classes for nearly 50 years. Second, we can draw upon a deep reservoir of legal, financial, and technological resources to see the case through completion. And, third, we believe deeply in what we do: achieve justice for people and businesses injured by violations of the law.

**It's a challenging litigation market, with flat or declining demand, rate pressures, and other factors. From a business perspective, what does it take for a litigation department to succeed in this environment?**

To succeed in the current economic climate, or any climate, it takes talent, commitment and a singular focus on a mission of redressing wrongs perpetrated upon our clients and classes.

**What is the firm doing to ensure that future generations of litigators are ready to take the helm?**

The firm's founding members recently enacted a plan to transition from the original group of leaders to a close collaboration with the next generation of litigators in the firm. And that next group has kept firmly in mind the need to groom and train the lawyers that will come next so as to sustain the firm well into the future. To do so, the firm has expanded the membership of its executive team, populated important

committees charged with key management tasks with future leaders, and promoted a culture of independence and entrepreneurship so that future leaders can naturally rise to the fore.

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